NO. 22-6889

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Annamalai Annamalai — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE ELEVNTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Annamalai Annamalai
(Your Name)

BOP ID 56820-379; UNITED STATES PENITENTIARY
(Address)

P.O.BOX-1000 Marion Illinois-62959
(City, State, Zip Code)

(Phone Number)

QUESTION (S) PRESENTED

1. Whether the Hyde Amendment Attorney fees Award is "Civil", and if so, whether the Federal Rule of Civil Procedure, civil discovery, Doctrine(s) of Rooker-Feldman, Res Judicata are applicable and Mr.Annamalai is entitled to an award of attorney fees?

LIST OF PARTIES

[x] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix I to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[ ] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[x] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 02/10/2023, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

n/a

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

STATEMENT OF THE CASE

Mr.Annamalai Annamalai is a "legal immigirant from INDIA.He is a "High Priest/Monk", who is also the "Head Monk" of the 2000 years plus monastery known as "SIDDHAR PEEDAM" (see, generally www.siddharpeedam.org), located in INDIA. He moved to the United States with his wife and two kids approximately over 25 years back, who has ended up co-founding several Hindu Temples in the United States with his "own money/wealth" and also in support by his Indian Monastery.His religious organizations 99% funded by performing various rituals prayers known as poojas, and most notably, Mr.Annamalai is the "ONLY" Hindu-Indan American expert and scholar in the 4th spritual/Vedic Sceince known as "Atharva Veda" of the Hindu Religion in the United States, "until today".

Mr.Annamalai contributed his personal money of over $3,000,000.00 plus over $1,400,000,000.00 ($ 1.4 Billion) worth of artifects, Antique relics, paintings, and variosu "Hindu Gods" (186 gods) maded out of pure 24 ct gold, and with over 638 Diamond neckleces for such godly idols.All such idols, properties and the Hindu Temple was located in Norcross-Georgia,a suburb of Atlanta Georgia.The Temple was known as "HINDU TEMPLE & COMMUNITY CENTER OF GEORGIA INC. which is a 501(c)(3) Non-Profit religious organiztion, serving tens and thousands of Mr.Annamalai's "faithful folowers" and as well tens and thousands of "vistors/customers" who visit to get a particular Religious services or religious merchandise.
Mr.Annamalai is also the "first" and the "only" Indian American a man of Hindu faith, who has contributed over $1.4 Billion for the public causes, with the support of his faithful followers, "before" his brutal and malicious wrongful convictions.

The Temple ("HTG") was partly funded by a local Indian American owned community bank with $2.4 Million real estate loan, at the inception of the HTG.In the year of 2008 Financial crash the lending bank " Haven Trust Bank) got failed, and the FDIC has acutioned the "performing note" of the HTG (approximate loan was $1.99 Million) to an outsider, and Mr.Annamalai was 'not' allowed to buy back the note, being a "so called insider"as per the FDIC (Federal Deposit Insurance corporation.Latter, Mr.Annamalai' all the efforts to buy back the "note" from a man turned out to be a "most dangerous criminal, through his "shell" company known as "Anderson lake properties LLC, has acquired the note, who under belief and information is one of the notorious "mafiso" at Flowery Branch - Georgia, who has also bilked hundreds and millions of dollars from innocent American public, via his pyramid schemes, fake insurance and financial services company.Mr.Annamalai has offered $1,000,000.00 in cash, plus $4,000,000.00 worth Real properties 'in exchange" of buy back the HTG's note,

which under belief and information was acquired by the mafiso (Mr.Benjamin E.Hewitt) also known as "Mr.Hewitt/Hewit" , who also believed to be a "White Supremacist",who hates "blacks (African Americans) Jews (person of Jewish faith) and Immigirants of color like Mr.Annamalai , for $500,000-.

Then on or about July 2008, the Mafiso Hewitt attempted to "foreclsoe" to take control of not only the note he has bought for $500,000.00, whereas, it appeared that his malicious intention of taking over the HTG, which has in control of over $1,500,000,000.00 ($1.5 Billion) worth of properties and over $10 Million worth real properties, "all for a $500K investment, such mafiso has made Mr.Annamalai and other board members of the Temple were advised to file for Chapter-11 Bankruptcy petition, to "protect" the HTG's assets.Such experience happened to be "falling from pan to the fire".

The HTG sought for Chapter -11 protection at the Northern District of Georgia Atlanta Divison (Case no. 09-9080-JEM In Re.Hindu Temple & Community Center of Georgia Inc.)in the month of August 31, 2009.Then on or about November 6th 2009 the bankruptcy court has appointed a Trustee known as Mr.Lloyd T.Whitaker. ("Mr.Whitaker").Mr.Whitaker "surprisingly" hired a counsel for HTG's estate as Mr.James Hayden Kepner ("Mr.Kepner"), who in fact was "respresenting the mafiso Hewit and his shell company "TITAN FINANCIAL SERVICES in multi million Chapter-7 Bankruptcy simultaneously (in direct conflict of interest(s)).Mr.Whitaker and Mr.Kepner has sold "all" the ($1,500,000,000.00 $1.5 Billion worth HTG's properties to the same mafiso by a "settlement agreement" by which Mr.Whitaker receiving just $135,000.00 for the HTG's estate.Then Mr.Whitaker and Mr.Kepner has done every "unlawful acts" inclusive of using their privy, sexually assault Mr.Annamalai's wife Ms.Parvathi Sivanadiyan, hitman to terrorize Mr.Annamalai's kids, wife, Mr.Annamalai inclusive of assault and regular beating up on the priests who are "loyal" to Mr.Annamalai, who all were "fired" by Mr.Whitaker, after he taken over the HTG. Most notably, Mr.Whitaker "did" not operate the HTG, not even for a "single day" and he has 100% shut the operations by November of 2009.

On or about December 2009, Mr.Annamalai, after the HTG priests were "fired" by Mr.Whitaker the so called Trustee, a "new Temple" (second Temple) was formed with the Secretary of State of Georgia known as "SHIVA VISHNU TEMPLE OF GEORGIA INC" in completely a different location, and continued the religious services for the faithful followers" of Mr.Annamalai and the Shiva Vishnu Temple of Georgia. (hereinafter "SVTG").Mr.Annamalai was given with Priest-parsonage allowance in

the form of payments for his homes by SVTG, and those homes were all on Mr.Annamalai's name, and Mr.Annamalai had a "full time employment" at that point with SVTG, and bringing "new income through new religious services" for the "SVTG".In furtherance of threats and harms to Mr.Annamalai and his family, Mr.Annamalai's wife was "SEXUALLY ASSAULTED AND BATTERED AND ALSO ENDURED A RAPE ATTEMPT" by the hitman, privy of Mr.Whitaker, which was orchestrated by the "privy" "friend" of Mr.Whitaker. See Evidence no.1, the police report, Evidence no.2 the charges filed against that person (Mr.Valmikintahan Raghunathan).Under belief and information, the felony attempt rape and aggrevated sexual assault charges were reduced to misdemeanor charges, "after" the intervention of Mr.Whitaker and Mr.Kepner for that rapist person.

Because of the continuing threats and danger to the life, safety and security of Mr.Annamalai, his kids and wife, all have moved to the state of Ohio, at Dayton Ohio, with the part of the Hindu priests also moved with them, to ohio and another new temple (Temple no.3) known as "HINDU TEMPLE OF OHIO inc" was formed, and Mr,Annamalai has started serving the "SVTG" and Hindu Temple of Ohio Inc. ("HTO").Mr.Annamalai's wife who has a business backgrond has started an entity known as "PARU SELVAM LLC " in Dayton ohio, and ended up buying a Vintage office tower in Downtown Ohio @ 32-38 North Main Street, opposite to the "court house square", a "prime real estate with 15 stories and with 266,638 sq feet, fully furnished office tower.

Then the "extortion" and "black mailing" went were aggrsseive from Mr.Whitaker Mr.Kepner, who has openly extorted the $210,000,000.00 plus reproduction valued office tower which was named as "Paru Tower" as noticed in the prior paragraph, in "exchange" to avoid a "crimianl charge" Mr.Whitaker intend to bring upon Mr.Annamalai. At the same period the bankruptcy civil action Case no. 09-9080 of the HTG was going on at Atlanta Georgia.Mr.Whitaker has denanded and als argued as such the Paru tower" property owned by Paru Selvam LLC, was the "fruit of unautorized transfer since Paru Selvam LLC has transferred the Paru Tower property to another of its subsidary entiry located in Texas known as "ASHOK SPIRITUAL.HEALING CENTER", and the Trustee Whitaker wanted such trasnfer be nullified and needed the Paru tower as the property of the HTG's estate. After a several months of court battle, the Bankruptcy judge in Atlanta Georgia "expressly" ordered the Trustee Whitaker with a "permanent injunction" as such he "shall" not go after any and all "transferred properties" by the defendants (inclusive of Paru Selvam LLC, Annamalai Annamalai

Ms.Parvathi Sivanadiyan). The Bankruptcy court has also expressly found out as with the following specific facts findings and law.The pertinent portions are as follows:-See, Evidence no.3, and please be advised that, the term "OHIO-- DEFENDANTS" as enumerated in that order refers the entity(s) PARU SELVAM LLC (which has owned the $210 Million valued 15 storied office tower, which has transferred such property to "Ashok Spiritual healing Center, in Texas) and HINDU TEMPLE OF OHIO.

The Ohio Corporate Defendants and Parvathi Siva admitted that they received assets of the Debtor after the petition date without court authorization. But Plaintiff introduced no evidence to identify such assets or to establish their value.

There is no evidence that any of the transferees of estate property gave any value to the estate in respect of those transfers.

In his post-petition brief, Plaintiff asked for a judgment against the Corporate Defendants for the value of the unauthorized postpetition transfers, though he mistakenly concluded that the revenues derived from the use of the transferred property constituted property of the estate. He did not seek to recover the transferred property. Under section 550, Plaintiff is entitled to recover from the Corporate Defendants, jointly and severally, the sum of $111,000.00, representing the value of the "Siddhi Time USA," the web sites and the telephone numbers transferred by the Debtor postpetition to the Corporate Defendants without court approval.

Plaintiff proved through Mr. Crumpton's testimony that Mr. Annamalai was the person for whose benefit the unauthorized postpetition transfers were made and that the value of those transfers made to him or for his benefit totaled $67,000.00. Plaintiff is entitled to only a single satisfaction of his claim and hence may not recover more than $111,000.00 in total from Mr. Annamalai and the Corporate Defendants with respect to the postpetition transfers.

Plaintiff is not entitled to recover any amount from the Ohio Defendants and Parvathi Siva because he failed to introduce any evidence to identify property of the estate allegedly transferred to each of them or to show the value of such property.

B. Conclusions of Law.

Section 550 of the Bankruptcy Code provides alternative relief: recovery "for the benefit of the estate, [of] the property transferred, or, if the court so orders, the value of such property." The word "or" does not mean "and." A trustee must choose one or the other. *See In re C.W. Min. Co.*, 465 B.R. 226, 233-234 (Bankr.D.Utah 2011) ("It is within the court's discretion to order *either* recovery of the property transferred *or* its value." (Emphasis added.))

In seeking a money judgment under section 550 with respect to unauthorized postpetition transfers, Plaintiff elected to recover the value of property transferred and not the transferred property itself. Post-Trial Brief - A.P. Doc. 376. In doing so, he abandoned any claim to the transferred property and hence is not entitled to an injunction prohibiting the transferees from using that property or its turnover.

Plaintiff introduced insufficient evidence to identify any property of the estate in possession of any Defendant other than the "Siddhi Times USA," the web sites and the telephone numbers and is not entitled to turnover of unidentified property that may or may not exist, despite admissions of Defendants that they received unauthorized transfers of property of the estate and is not entitled to injunctive relief as to such alleged transfers.

Because Plaintiff elected a judgment for the value of the transfers avoided under section 549, he is not entitled to a judgment against Mr. Annamalai beyond that granted with respect to Counts 4 and 5. The court declines to infer from the evidence presented that Mr. Annamalai and other Defendants generated total revenue of $40,000.00 a month after November 2009 for 35 months using the magazines, web sites and telephone numbers that belonged to the Debtor.

The court declines to sanction Mr. Annamalai for violating the automatic stay imposed by section 362 based on the postpetition transfers of the magazine, web sites and telephone numbers, notwithstanding that he controlled both the Debtor and the Corporate Defendants. Transfers in violation of the automatic stay are void. *Borg-Warner Acceptance Corp. v. Hall*, 685 F.2d 1306, 1308 (11th Cir. 1982). If unauthorized postpetition transfers are void as violations of the automatic stay, section 549 would serve no purpose. Hence, section 362 does not apply to transfers initiated by the debtor. *In re Schwartz*, 954 F.2d 569, 574 (9th Cir. 1992).

The bankruptcy court's partial judgement, was "fully adopted" to the Final judgement by the district court latter and "no one" has appealed such order so far, until today, over 11 years now.After such "malicious and frivolus bad faith attempt to swolow the $210 Million worth of Paru Tower, Mr.Annamalai and his wife were again "extorted" and "blackmailed" in July of 2013, via Mr.Annamalai's former counsel Mr.Jerome Ferolich of Atlanta Georgia, to "relinquish" all the ownership interests in the Paru Tower, and $750,000.00 "cash" to Mr.Whitaker "in exchange" of Mr.Whitaker "will not move to prosecute Mr.Annamalai on a "bankruptcy conspiracy, Bankruptcy Frau and money laundering charges.The "indecision" and "for not agreeing" to such extortionate attempts, has brought a vexatious and frivolus Bankruptcy fraud charges against Mr.Annamalai for $32,000.000 (to be noticed that, by that time Mr. Annamalai in fact has contributed in millions of dollars to the same HTG!!!).

Mr.Annamalai was arrested on the phony bankruptcy fraud and underlying money laundering charges at the Northern District of Georgia in the criminal case number 1:13-cr-00437-TCB-CMS (Atlanta Division,United States V.Annamalai Annamalai).Also an innocent priest of the Temple was "thrown as a "bonus" to establish the "conspiracy to commit, bankruptcy fraud charges", although the Bankruptcy trustee Massey, expresly found out no such bankruptcy fraud ever occured.See, Evidence no.3. (the co-defendant Mr.Kumar Chinnathambi, latter was forced to take "plea" for "bankruptcy fraud" charges and has recived 2 years of imprisonment, after he became the so called government's witness!!)

On or about 1.1.2014, Mr.Annamalai's wife Ms.Parvtahi Sivanadiyan, this time was "openly extorted and blackmailed" to give up for "free" the $250 Million plus reprorcuction valued Paru Tower, "in exchange for the dismissal of the phony bankrupcy fraud and money laundering charges" so that, Mr.Annamalai go home immediately. Such extortions have occured, when the trial Judge Batten left for to attend a phone call in his chambers for approximately 30 minutes.See, Evidence no.4, the "sworn affidavit" given by Ms.Parvtahi Sivanadiyan, the principal owner of $210 Milion plus valued Paru Tower, by reference fully and expressly reincorporated herein, with the Evidence no(s) 1, 2, 3 as well.

The indecison to agree for the "blackmailing" has brought more harnms for Mr.Annamalai with more (fake" charges inclusive of Bank fraud for $11,854-. At the trial the government attorneys has portrayed Mr.Whitaker as the victim of Bankruptcy fraud (although the HTG was the one filed for bankruptcy protection) and 6 (six) natural individuals were brought as "victims" of "bank fraud" to the tune of $11,854, in fact the same persons were the "debtors" to the HTG, who has failed to settle their respective debts, who were "settled" with the Trustee

Whitaker, to give up millions of dollars debts they owed to the HTG, exchange of they come and "testify against" Mr.Annamalai as they are the "victims of bank Fraud!!

Mr.Annamalai has lost his 34 counts of trial, and has faced the mockery sentencing before a judge, who has repeatedly attacked Mr.Annamalai's Hindu faith his Hindu High priest status, even before Mr.Annamalai has faced his trial the trial judge has made very angry and hateful statements, inclusive of the following:

> THE COURT: He is not quite----He is like the guy in Monthy Python.His arms and legs have been choped off, but he is not quite willing to give up.He is still fighting and I am going to let him fight with that condition and fight in that condition.
>
> -See Evidence no.5 (pertinent part of the Pre-trial transcripts".

Mr.Annamalai has received the "highest" sentencing in the American History, although he has "no prior criminal convictions" for the Bankruptcy counts with 20 years and for Money laundering counts with 20 years and with $28 years of sentencing for the bank fraud counts involving $11,854. Then Mr.Annamalai has appealed his brutal convictions and sentencing.The Eleventh circuit court of appeals has expressly found out there was "no legal basis" to prosecute Mr.Annamalai on the bankruptcy fraud, conspiracy and money laundering counts, and has thrown away 22 counts of such convictions, and remanded the case for the so called resentencing on the balance 12 counts of convictions.

Mr.Annamalai has timely filed his motion for Hyde amendment attorney fees award on the vacated 22 counts of convictions. The trial court judge which has repeatedly attacked Mr.Annamalai's sincerely held religious beliefs, who has expressly ordered as "he is not a holy man, his holy cloth is a koke, its joke to call him as a Holy man" and etc, has denied such Hyde Amendment fees award petition.

Mr.Annamalai timely appealed such petition to eleventh Circuit court of appeals and the court after several months has conducted a so called "oral argument" by appointing a counsel (Ms.Leigh Ann Webster) on 08.10.2021. Then on or about 11/26/2022,the appellate court has affirmed such erroneous denial of the Hyde Amedmen attorney fees award.

Mr.Annamalai timely filed his "En banc rehearing and also "panel rehearing", which was denied on 2.10.2023 Before denial of such petition, even Mr.Annamalai was "Criminally sanctioned" with 100% in violation of Mr.Annamalai's protected due process rights, as if Mr.Annamalai's couple of Exhibits which were attached to Mr.Annamalai' en banc determination "was forgery" by "giving citation to the United States attorney's

office, which in fact has maliciously prosecuted Mr.Annamalai on the 22 counts of convictions. Mr.Annamalai has timely responded to such malicious show cause order, then the appellate Panel judges" immediately backed off " without accepting" their wrongful acts and wrongful criminal citations, which was nothing but a sua ı sponte criminal contempt against a man of color an man of diferent ethincity, religion, race per se. Now this appeal to this court follows, to get justice accordingly.

REASONS FOR GRANTING THE PETITION

The appeal matters presented in this action of "FIRST IMPRESSION" to this court. Secondly, there is a "serious split" between the appellate courts in the United States about "whether Hyde Amendment attorney fees award is an "ancillary civil proceedings" underlying the criminal action or not.Third the Eleventh Circuit court of appeals involved in this matter has decided an important federal, question in a way that "conflicts" with the decison by a state court of Indiana, and in direct violation of the same court's "binding case precdents" concerning "Hyde Amendment attorney fees award", Res Judicata, Rooker-Feldman doctrines.Last but not the least the underlying criminal convictions which was vacated with 22 counts of convictions, also of "first impression" to this court and also to "any federal courts" in the United States, since no human or entity ever prosecuted for a "bankruptcy fraud. bankruptcy fraud conspiracy and money laundering" based on a "novel" "fentastic""unimaginable theory in "bad faith, vexatious or frivolus manner, now let to, the wrongful conviction of a "man of color" a "Hindu High Priest", who is of different race, ethinicity, religion, who is presently with over 17,000,000 Million "faithful followers" and over 90% of them are "American public members".

- PLEASE SEE THE FOLLOWING BRIEF IN SUPPORT OF REASONS FOR GRANTING THIS PETITION

REASONS FOR GRANTING THIS PETITION

1. Whether the Hyde Amendment Attorney Fees Award is "Civil", and if so, whether the Federal Rule of Civil Procedure, Civil Discovery, Doctrine(s) of Rooker-Feldman and Res Judicata are applicable and Mr.Annamalai is entitled to an award of fees?

THE HYDE AMENDMENT

A. The Language of the **Hyde Amendment**

Enacted in an attempt to curb prosecutorial misconduct, the **Hyde Amendment** provides that, under certain circumstances, a criminal defendant may recover costs expenses, and attorneys' **fees** incurred as a result of a bad-faith prosecution. See United States v. Gilbert, 198 F.3d 1293, 1299-1302 (11th Cir. 1999) (discussing legislative history). Title 18, United States Code, Section 3006A (Statutory Note), amended effective November 26, 1997, by Public Law No. 105-119, 111 Stat. 2440, 2519, sets out in Section 617 of the Act (the "**Hyde Amendment**"):

> During fiscal year 1998 and in any fiscal year thereafter, the court, in any criminal case (other than a case in which the defendant is represented by assigned counsel paid for by the public) pending on or after the date of the enactment of this Act [Nov. 26, 1997], may award to a prevailing party, other than the United States, a reasonable attorney's fee and other litigation expenses, where the court finds that the position of the United States was vexatious, frivolous, or in bad faith, unless the Court finds that special circumstances make such an award unjust. Such awards shall be granted pursuant to the procedures and limitations (but not the burden of proof) provided for an award under section 2412 of title 28, United States Code. . .. (emphasis added).In Adkinson III, the Eleventh Circuit held that, in this case, the government acted vexatiously and in bad faith. Adkinson III, 247 F.3d at 1293. In addition to showing bad faith or vexatious conduct by the government, a defendant must also show (1) that the trial was in progress on or after fiscal year 1998; (2) the defendant's net worth was less than $ 2 million; (3) the defendant was the "prevailing party" in the criminal case; (4) the defendant did not have court-appointed counsel; and (5) the defendant's attorneys' **fees** and costs are reasonable. Id. at 1291 n.2. The defendant bears the burden of proving all elements of the **Hyde Amendment** claim by a preponderance of the evidence. Id. at 1291. The government concedes that this case was still "pending" after the Hyde Amendment's effective date, November 26, 1997, that the defendants meet the net worth requirements, and that the defendants were prevailing parties. The only remaining question is the amount of reasonable attorneys' **fees** and costs to which the defendants are entitled.

B. The "procedures and limitations" for filing a **Hyde Amendment** Claim

The **Hyde Amendment** adopts the procedures and limitations of the Equal Access to Justice Act, Title 28, United States Code, Section 2412 ("EAJA"), for the award of attorneys' **fees**, expenses, and costs. The parties dispute whether the attorneys' fee caps provided in Section 2412(d) apply to **Hyde Amendment** claims in general, and to this case in particular. I conclude that they do apply.

As with any matter of statutory interpretation, the starting point is the language of the statute itself. Barnhart v. Sigmon Coal Co., Inc., 534 U.S. 438, 450, 122 S. Ct. 941, 151 L. Ed. 2d 908 (2002). The first step "is . . to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case."Id. The **Hyde Amendment** itself provides for the award of "a reasonable attorney's fee and other litigation expenses" and that such awards shall be made "pursuant to the procedures and limitations (but not the burden of proof) provided for an award under section 2412 of title 28, United States Code" 18 U.S.C. § 3006A (statutory note).

The "limitations" Congress intended to incorporate by reference to Section 2412 are less than clear. The Hyde Amendment's general cross-reference to Section 2412

creates an ambiguity in light of the bad faith or vexatious conduct required to trigger **Hyde Amendment** liability. Section 2412 offers two alternative theories of recovery for attorneys **fees** and expenses, each of which are subject to different "limitations." See Maritime Mgmt., Inc. v. United States, 242 F.3d 1326, 1331 (11th Cir. 2001); Hyatt v. Shalala, 6 F.3d 250, 253 (4th Cir. 1993). The first theory, under Section 2412(b), makes the government liable for **fees** "to the same extent that any other party would be liable under the common law or under the terms of any statute which specifically provides for such an award." 28 U.S.C. 2412(b). This exception applies the equitable exceptions to the American Rule, including the bad-faith exception, to the government. Maritime Mgmt., 242 F.3d at 1331. An award of **fees** under Section 2412(b) is discretionary. Id.

The second theory for awarding **fees** under the EAJA is under Section 2412(d). An award under Section 2412(d) is mandatory upon showing that the prosecution was brought in bad faith. See Maritime **{256 F. Supp. 2d 1309}** Mgmt., 242 F.3d at 1332. Section 2412(d) provides for the award of costs under Section 2412(a) as well as "**fees** and other expenses," which is defined to include reasonable costs of expert witnesses and "reasonable" attorneys' **fees**. 28 U.S.C. § 2412(d)(1)(A), (d)(2)(A). Awards under Section 2412(d) contain several limitations, the most important of which for this case is that the hourly fee cannot be in excess of the statutory fee cap unless the court determines an increase in the hourly rate is justified for cost of living or "special factors." 6 28 U.S.C. § 2412(d)(2)(A)(ii). The Eleventh Circuit, in Adkinson III, indicated that at least one of the limitations in Section 2412(d), the $ 2 million net worth limitation, applied to **Hyde Amendment** claims. 7 Adkinson III, 247 F.3d at 1291 n.2.

By enacting the **Hyde Amendment**, Congress provided for the award of "reasonable" attorneys' **fees** subject to the "procedures and limitations" in Section 2412. Both Section 2412(b)and 2412(d) provide for the award of a "reasonable" fee, the former not subject to any cap, the latter subject to the statutory cap in Section 2412(d)(2)(A). The question arises which "reasonable" fee did Congress intend to apply? The defendants argue that their **Hyde Amendment** claim is made under Section 2412(b), that a fee award is not subject to the statutory cap, and that the court should use the lodestar method for calculating a reasonable fee, including the application of a multiplier. 8 The government argues that an award of **fees** under the **Hyde Amendment** is subject to the statutory caps in Section 2412(d)(2)(A).

The language of the **Hyde Amendment** itself is ambiguous on this point. Considering the purposes of the **Hyde Amendment** and its legislative history, that, when providing for a "reasonable fee," Congress intended for the fee caps in Section 2412(d)(2)(A) to apply to **Hyde Amendment** claims. Congress incorporated the "limitations" of Section 2412, and Section 2412(b), which merely reverts to the common law standard, is no limitation at all. The language of the **Hyde Amendment** largely tracks the language of Section 2412(d)(1)(A), except for the bad faith standard and the burden of proof. Further, the **Hyde Amendment** itself is a waiver of sovereign immunity providing for the award of attorneys' **fees** and expenses to criminal defendants prosecuted in bad faith. Like all waivers of sovereign immunity, the **Hyde Amendment** must be narrowly construed and any ambiguity must be resolved in favor of the government. Lane v. Pena, 518 U.S. 187, 192, 116 S. Ct. 2092, 2096, 135 L. Ed. 2d 486 (1996); Ardestani v. INS, 502 U.S. 129, 137, 116 L. Ed. 2d 496, 112 S. Ct. 515 (1991). This rule of construction alone would indicate the appropriateness of applying the fee caps in Section 2412(d)(2)(A).

The legislative history surrounding the enactment of the **Hyde Amendment**, though sparse, confirms interpretation. See Gilbert, 198 F.3d at 1299-1302 (discussing legislative history). The legislative history mainly consists of the House floor debate that occurred when Representative Hyde offered his amendment. See 143 CONG. REC. H7790-94 (daily ed. Sept. 24, 1997). As originally offered by Representative Hyde, the **Hyde Amendment** was virtually identical to Section 2412(d)(1)(A), utilizing the substantial justification standard and placing the burden of proof on the government. Representative Hyde stated:

> We have a law called the Equal Access to Justice Act, which provides in a civil case if the Government sues you, and you prevail, if the Government cannot prove substantial justification in bringing the suit, you are entitled to have attorney's **fees** and costs reimbursed. . .If it was an abuse of process, if it was malicious, then the victim, the defendant who has prevailed, is entitled to attorney's **fees**, very modest, $ 125 an hour.
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> * * *

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> * * *
>
> Now it occurred to me if that is good for a civil suit, why not for a criminal suit?. . .As in the Equal Access to Justice Act, you Should be entitled to your attorney's **fees** reimbursed and the costs of litigation, again at the same modest rate. That, my friends, is justice.
>
> * * *
>
> I am not asking for damages. . .but we are asking that you repair the wound, the economic wound, somewhat by awarding attorney's fees.143 CONG. REC. H7791 (daily ed. Sept. 24, 1997)(statement of Rep. Hyde)(emphasis added).

Several representatives raised concern about the substantial justification standard and its effect on criminal prosecutions. See, e.g., 143 CONG. REC. H7792 (remarks of Rep. Skaggs, stating "Were the words 'malicious' and 'abusive' in [Rep. Hyde's] amendment, and maybe those are criteria that also ought to be introduced, it would be a different matter."). The **Hyde Amendment** faced stiff opposition from the President and the Justice Department, who both charged that the low substantial justification standard would deter criminal prosecutions in difficult cases and would detract from prosecutorial resources. 143 CONG. REC. H7792 (remarks of Rep. Skaggs. quoting letter from the President). The bad-faith standard was added in conference committee and the burden of proof was shifted to the defendant in an effort to address the concerns raised. 9 Had the substantial justification standard introduced by Representative Hyde remained, there would be no question that the fee caps in Section 2412(d) would apply, although **Hyde Amendment** claims would be more commonplace. It is apparent that the fee caps were one of the limitations intended to apply. It is also apparent that the bad faith standard was added to elevate the burden of proof placed on a **Hyde Amendment** claimant and to limit the Hyde Amendment's application, not to expand the scope of the government's liability outside the Section 2412(d) fee caps under the entirely different theory of liability in Section 2412(b). 10 I thus conclude that the fee caps in Section 2412(d) apply to **Hyde Amendment** claims. See United States v. Sherburne, 249 F.3d 1121, 1129 (9th Cir. 2001)(interpreting the "limitations" incorporated by the **Hyde Amendment** to include the § 2412(d)(2)(A) fee caps and instructing district court to apply EAJA caps, not CJA caps, on remand). To the extent that the **Hyde Amendment** could be construed to provide discretion to proceed under either Section 2412(b)or 2412(d), I choose to apply the standard in Section 2412(d) to this case.

C. This court's intervention is "must" to decide, whether the Hyde Amendment attorney fees award is a "civil" in nature underlying the criminal action or a "criminal motion" and "criminal in nature"

There is a split among the Circuits regarding **Hyde Amendment** applications and whether appeals from decisions on such applications should be considered civil or criminal. **See United States v. Truesdale**, 211 F.3d 898, 904 (5th Cir. 2000) (holding Federal Rule of Appellate Procedure 4(a) applies to appeals from **Hyde Amendment** rulings); **United States v. Robbins**, 179 F.3d 1268, 1270 (10th Cir. 1999) (holding Federal Rule of Appellate Procedure 4(b) governs); **see also United States v. Holland**, 214 F.3d 523, 525 (4th Cir. 2000) (**Hyde Amendment** proceedings are **civil in nature**).

Hyde Amendment litigation matters as " Hyde Amendment litigation is "civil" in nature. See, ADKINSON, 256 F.Supp 2d 1297 (11th Cir. 2013).

"Appellants in criminal cases do not often attempt to rely on the longer appeal deadlines for civil cases, but in several such appeals filed under the umbrella of criminal cases, we have applied a pragmatic approach that looks to the "substance and context, and not the label, of the proceeding appealed from [to] determine its civil or criminal character." *Betts v. United States*, 10 F.3d 1278, 1283 (7th Cir. 1993) (applying civil deadline to appeal from denial of certificate of innocence). We have taken this approach because "many appealable orders technically 'in' criminal cases look more civil than criminal," especially when they pertain to "postjudgment remedies ... collateral to criminal punishment." *United States v. Taylor*, 975 F.2d 402, 403 (7th Cir. 1992) (applying civil deadline to appeal of denial of order for return of seized property); *United States v. Lee*, 659 F.3d 619, 620-21 (7th Cir. 2011) (applying civil deadline to appeal of order to defendant to turn over funds in retirement accounts), citing *United States v. Kollintzas*, 501 F.3d 796, 800-01 (7th Cir. 2007) (allowing government to pursue garnishment and other civil debt collection techniques under umbrella of criminal case); *United States v. Santiago*, 826 F.2d 499, 502 (7th Cir. 1987) (applying civil deadline to surety's appeal of forfeiture of bail bond: "a bail bond is a civil contractual agreement between the government and the surety on behalf of the criminal defendant"); cf. *Lilly*, 206 F.3d at 760 (applying criminal deadline where defendant sought declaration that he had satisfied his forfeiture obligation, which was a condition of ongoing supervised release portion of sentence); *Apampa*, 179 F.3d at 556 (applying criminal deadline to defendant's appeal of forfeiture portion of sentence)."

"Our approach is consistent with decisions from other circuits applying the civil deadline to similar, essentially civil, proceedings within criminal cases. E.g., *Palma v. United States Dep't of Alcohol, Tobacco, and Firearms*, 228 F.3d 323, 327-28 (3d Cir. 2000) (applying civil deadline to government's appeal from decision granting defendant relief from ban on possessing firearms: "A proceeding can not be defined as criminal merely because it arises from, or pertains to, a prior criminal proceed-ing."); *United States v. Holland*, 214 F.3d 523, 526 (4th Cir. 2000) (applying civil deadline to government's appeal from order awarding attorney **fees** to acquitted defendants under **Hyde Amendment**: "Ancillary motions in a criminal case are not necessarily criminal.... [A] proceeding that is basically civil should be considered a civil action even if it stems from a prior criminal prosecution."); *United States v. Alcaraz-Garcia*, 79 F.3d 769, 772 n.4 (9th Cir. 1996) (applying civil deadline to third party's appeal of denial of petition to amend forfeiture claim); *United States v. Truesdale*, 211 F.3d 898, 902-03 (5th Cir. 2000) (applying civil deadline to acquitted defendants' appeal of denial of attorney **fees** under **Hyde Amendment**); *United States v. Lavin*, 942 F.2d 177, 181-82 (3d Cir. 1991) (applying civil deadline to third party's appeal of denial of its petition for property seized in criminal forfeiture proceedings); see also *United States v. Brouillet*, 736 F.2d 1414, 1415 (10th Cir. 1984) (en banc) (applying civil deadline to appeal from order relating to forfeiture of bail bond). For a collection of cases addressing the boundary between civil and criminal appeals, see 20 James Wm. Moore, *Moore's Federal Practice* §§ 304.10 and 304.20 (3d ed. 2019). Specific statutory language may offer guidance in classifying particular matters, but in the absence of such specific guidance for this dispute over a settlement agreement, we apply our pragmatic approach based on the nature of the proceeding and how closely it was tied to the actual conviction and punishment of the defendant."

Mr.Annamalai has argued at the district court and as well as at the 11th circuit as the Hyde Amendment attorney fees matter is a civil ancillary proceedings in the criminal action, wherefore the Federal rule of civil procedure applies.However at both level of such courts, such an imporatnt and basic matter was ever decided one way or another,Most notably the same 11th circuit court of appeals in other Hyde amendment litigation matters is

" Hyde Amendment motion do not implicate movant's liberty interests, perhaps the Rule in ' Hunt " where we suggested that, motions that are not a part of the trial and punishment process that is criminal law, should be treated as " civil ". United States V. Holland, 214 F.3d 523, 526 (4th Cir 2000)(A proceeding is considered civil, if it redresses private injuries a criminal proceeding by contrast, establishes guilt and Punishment offenses) United States V. Murater, 807 F.3d 717 (2015).

" Further, the Hyde Amendment specifically suggesting that and also incorporate by reference the ' procedures ' of the equal Access to justice Act, which regulate fees in a civil context, suggesting that a Hyde amendment application too, should be viewed as " c i v i l ", and "C i v i l r u l e s A p p l i e s ". United sates V. Holland, 214 F.3d 523 (4th cir 2000).

" Hyde amendment proceeding were civil in nature. The defendant's Hyde Amendment claims, though civil in nature are a proceeding ancillary to his original criminal prosecution and are " N O T " a new civil action". United states V. Adkinson, 256 F.Supp 2d 1297 (11th Cir 203)." An action seeking fees under the Hyde Amendment was civil in nature and ancillary to the criminal proceedings. (case law omitted).

So as an indisputable fact the circuit court has simply did not rule on the basic and an ultimate claim about whether the hade amendment fees award is a civil in nature or at all.Such a decison, appears to be knowingly and willingly left out by not to consider or legally established Fed.R.civ.P.36(b) admissions by the government attorneys and its privies. See, Evidence no.6, the true copies of the various "deemed admissions" of such persons, when Mr.Annamalai has served Request for admissions under Fed.R.Civ.P.36, latter moved the district court for summary judgement as a matter of law, since after the rule 36(b) admissions, there was no genuine dispute as to any material facts and Mr.Annamalai was entitled to a summary judgement for the full fees award under Hyde Amendment attorney fees award per se.Most notably the government attorneys and its privies never and ever moved the district court to 'undeem their Rule 36(b) admissions, and respectfully to say that , they are not above the law. The true copies of the admissions under Fed.R.Civi. P.36(b) are enclosed herewith as Evidence no(s) 6 and fully reincorporated herein

> Rule 36 of the Federal Rules of Civil Procedure governs requests for admissions, allowing a party to serve on "any other party a written request for the admission . . . of the truth of any matters within the [general scope of discovery] set forth in the request that relate to statements or opinions of fact or of the application of law to fact." Fed. R. Civ. P. 36(a). 22 The purpose of the rule is "to expedite the trial and to relieve the parties of the cost of proving facts that will not be disputed at trial." 8A Charles Alan Wright, Arthur R. Miller, & Richard L. Marcus, *Federal Practice and Procedure* § 2252 (2d ed. 1994); *Pickens v. Equitable Life Assurance Soc'y*, 413 F.2d 1390, 1393 (5th Cir. 1969). The served party has thirty days after service to respond to the request - by a written answer "specifically denying the matter" or "setting forth in detail the reasons why [it] cannot truthfully admit or deny the matter" or by objecting to the request. Fed. R. Civ. P. 36(a). If a party fails to respond within thirty days, then "the matter is admitted." *Id.*
>
> Once the matter is admitted, Rule 36(b) provides that it is "conclusively established unless the court on motion permits withdrawal or amendment of the admission." Fed. R. Civ. P. 36(b).

" an admission by a party carries considerably more weight than inferences drawn from documentary evidence purporting to support a certain fact, indeed an admission by a party is " conclusively established ", as a fact in the case. See: Fed.R.civil.P. 36(b):See also In re. Carney 258 F.3d 415, 420 (5th Cir 2001) (Rule 36 admissions.....are conclusive as to the matters admitted, they can not be over come at the summary judgment stage....) 8 b CHARLES ALAN WRIGHT & ARTHUR R. MILLER, Federal Rules and procedures * 2264 (3d ed 2013). (noting that a rule 36 Admissions " deliberately drafted by parties for the extreme purpose of limiting and defining the facts in issue, is traditionally regarded as conclusive). See also In re. La. Crawfish Products 852 F.3d 456 (5th cir 2017).

Fed.R.Civi.P.36:

(1) *Scope.* A party may serve on any other party a written request to admit, for purposes of the pending action only, the truth of any matters within the scope of Rule 26(b)(1) relating to:

(A) facts, the application of law to fact, or opinions about either; and

(3) *Time to Respond; Effect of Not Responding.* A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney. A shorter or longer time for responding may be stipulated to under Rule 29 or be ordered by the court.

HISTORY: Amended March 19, 1948; July 1, 1970; Aug. 1, 1987; Dec. 1, 1993; Dec. 1, 2007.

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, "[a] party may serve on any other party a written request to admit, for purposes of the pending action only, the truth of any matters within the scope of Rule 26(b)(1) [of the Federal Rules of Civil Procedure] relating to . . . facts, the application of law to fact, or opinions about either[.]" Fed. R. Civ. P. 36(a)(1)(A). Rule 36 provides further, in pertinent part, that "[a] matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney." Fed. R. Civ. P. 36(a)(3). Because Cox did not answer the government's requests for admissions, the matters therein are deemed admitted[3]

The use of an alternative form of discovery does not eliminate the requirement that a request for admissions be answered within 30 days.

Fed. R. Civ. P. 36(b) provides that any matter that is admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provision of Rule 16 governing amendment of a pre-trial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtains the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining the action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission for any other purpose nor may it be used against the party in any other proceeding.

Admissions made under Fed. R. Civ. P. 36, even default admissions, can serve as the factual predicate for summary judgment. Fed. R. Civ. P. 36(b) provides that a matter admitted is "conclusively established."

D. Mr.Annamalai was/is also entitled to Summary judgement under Fed.R.Civi.P. 56(a) and the indecison of whether Hyde amendment fees award is a civil matter or not has violated any and all due process and also in conflict with other circuits and "this court's" intervention is now needed to have "uniformity of rule" now

Its a common Maxim that Equity is not for those who sleep on their rights" Flores V. united states, 791 Fed App'x 312; Mathis V. Thvler, 616 F.3d 461 (5th Cir 2010).

A prosecutor and Federal agents who were/are involved in the appellants prosecution of the thrown away counts by this court, are NOT ABOVE THE LAW ".They SHOULD AND SHOULD HAVE RESPONDED TO THE REQUEST FOR ADMISSION IN A TIMELY MANNER, AND THEIR LONG SLEEP, IN NOT FOLLOWING THE LAW AND THE FEDERAL RULE OF CIVIL PROCEDURE 36, SHOULD NOT BE A BURDEN FOR THE APPELLANT BY ANY AND ALL MEANS to get more financial harms and injuries.

" The executive branch of the government is NOT above the law " United States V. Nixon, 418 U.S. 683 (1974).

As well demonstrated above, the FACTS are conclusively established via the deemed admissions, and Annamalai (ANNAMALAI ANNAMALAI) is entitled to specific performance as evidenced by each and every one of the (deemed) admisssios as a 'matter of law'.

E. Defendant ANNAMALAI ANNAMALAI " shall " be entitled to judgment to his favor, as a " matter of law " pursuant to Federal Rule of civil procedure 56(a), since the prosecution has already " admitted " to the facts, as such the " position " of the United States in prosecution the appellants was Vexatious, frivolous or in bad faith.....

Annamalai as explained above served the RFAs on the prosecuting attorneys and agents.Then after several weeks, Annamalai after the 'RFAs are deemed admitted, moved the district court for a summary judgement under federal Rule of Civil Procedure 56(a). See: Evidence no. 6 .The district court in a shocking conscious way, again to 'help' and 'bail out' the corrupt prosecutors. summarily denied the motion for summary judgement, by simply throwing away the facts established by that time, and numerous binding case predents of this circuit concerning the way and rule of how to handle the summary judgement motions. When Annamalai has filed his motion for summary judgement, after the 'admissions'by the conclusively established facts, established as such " NO GENUINE ISSUES TO ANY MATERIAL FACTS" PER SE.

" As stated, the court's role at the summary Judgment stage is " N O T " to weigh the evidence or to determine the truth of the matter, but rather to determine ONLY whether a genuine issue exists for trial" Anderson V. Liberty Lobby Inc., 477 U.S. 242, 249, 106 S.Ct 2505, 91 L.ed 2d (1986). If this case were to proceed to trial, the government's attorneys' would not be permitted to introduce evidence to " rebut the admissions which were deemed admitted "and made during its discovery phase of the criminal proceedings" Williamson V. City of Dothan, 818 F. 2d 755 (11th cir 1987).

" Summary judgment is appropriate " if the moving shows that there is no genuine dispute as to any material fact and the movant is entitled to judgments as a mater of law. "Fed R.Civil.P.56(a). A factual dispute is " N O T " enough to defeat a properly pled motion for summary judgment" Anderson V. Liberty Lobby Inc., 477 U.S. 242-243, 48, 106 S.Ct 2505, 91 L.Ed 2d 202 (1986) :See also Celotex Corp V. Catrett, 477 U.S. 317, 322, 106 S.Ct 2548, 91 L.Ed 2d 265 (1986).

" In form and substance the Fed.R.Civil.P.36 admissions is comparable to an admission in pleading or a " s t i p u l a t i o n " drafted by counsel for use at trial " Unite States V. 2204 Barbara lane, 960 F.2d 126 (11th 1992).

Summary Judgment is provided in Rule 56...section (c) , Rule 56 states as follows:

The judgment sought ' Shall " be rendered forthwith if the pleadings, depositions answers to interrogatories and " A D M I S S I O N S " on file, together, with the affidavits, show that there is " no genuine issues as to any material facts " and that the moving party is entitled to judgments as a matter of law" fed R.Civi.P.56(c) United States V.Kasuboski, 834 F.2d 1345 (7th cir 1967).

Here, the convictions of Appellant Annamalai were driven by prosecution's personal ambition (to give 'life imprisonment for a famous Hindu High priest with countless followers, disciples and customers) personal vindictiveness or politics. The prosecution of vacated counts of the appellants are NOT warranted, because it was intended to harass, intimidate, harm and injure and also without sufficient 'legal foundation'.

" Our Federal prosecutors are taught and often remained that the 'interest' of the United States " in a criminal prosecution is NOT that it shall win a case, but that justice Shall be done" Strickler V. Greene, 527 U.S. 263, 281, 119 S.Ct 1936, 1948, 144 L.Ed 2d 286 (1999).

F. The indecision about Whether Hyde amendment is a civil proceeding, alone "warrants" a "consideration by "this" court, to secure and maintain uniformity of the "panel's decision".

It appears that to "bail out" the "corrupt prosecution (prosecutors) and to " save" the district court judge of embarassment of "constant and continuing judicial misconduct and 'abuse of discretion", the panel "comfortably" 'left" a "major" claim of Mr.Annamalai, which is still lingering without a decison on such legal or factual question, this appeal process, and made Mr.Annamalai to go under constant PTSD, anxiety, depression, and convict him on the "fentastic" "novel" criminal charges, the so called "appointment of a counsel" " a so called oral argument" "ALL" appears to be a "mockery" and repeated "assault" on the "spirit of law/rules" and Judiciary per se.

Notably, the panel has "no discretionay authority" to "assault the "spirit of Fed.R. Civ.P.36(b), since it carries a mandatory character.Notably, the government attorneys patently failed to argue or otherwise asked their "favorable" judge Batten to "undeem the admissions" as given under the sub part of the same Fed.R.Civi.P.36 et seq.

At the page no.12, the panel has "declined" to give "opinion" on the "major" question/ claim submited by "without denying or not even adressing" "one way or another", and placing such a "major" question, "makes the panel decison" "utterly incomplete", and respectfully, "the justice was not served in "full" as a matter of the opinion itself, that alone warrants a "En banc" consideration by the full court.[3]

In fact the Fed.R.Civi.P.36(b) "enacted by congress", of course " can not be re written" by the panel in Rule 36(b) expressly states as follows with a "mandatory character".

> Fed.R.Civ.P.36(a)(3) :- "a matter is admitted unless, unless within 30 days, after being served....." 36(a)(b)(4):- If a matter is not admitted, the answer must specifically deny it, or....." 36)a)(5):- "grounds for objections to a request must be stated...."

Here, the panel itself expressly declined to address whether the Hyde amendment proceedings is civil or criminal (although several other sister circuits have expressly four out as Hyde Amendment proceeding is civil), however it has "contradicted" such a stand by expressly stating in its opinion in the page no.12 as" Annamalai's arguments are meritless, followed by a "polar oposite opinion by expressly stating as:"[2]

> "Even assuming that Rule 36 applies to this case-a question on which we express **no opinion because we do not reach whether a Hyde amendment motion is a civil proceeding or part of the underlying criminal action."** 2

Then, cherry picked and taken the "admitted (all) the "facts" as "legal conclusion, and "discredited".Mr.Annamalai respetfully state that, NOT ALL "

2,3. Such a opinion by sta ting as such Mr.Annamalai allegedly argued as such the Hyde amendment motion is a "separate civil proceeding".Let Mr.Annamalai respectfully cite, direct and caution the court that, "HE DID NOT" and never argued as such "hyde amendment motion" is a "separate civil proceeding".In fact he has argued as the hyde amendment motion is an "ancillary proceeding" to the criminal action".

of the Fed.R.Civ.P.36(b) are "with relates to an alleged legal questions".Take judicial notice of such Fed.R.Civ.P.36(b) admissions, and "ALL" such admissions are "resubmitted" expressly by reference to the "en banc determination" now. Respectfully the panels' o pinion is "speculative" and "expressly failed to rule on such question about whether the Hyde amendment motion is a civil proceeding is a "cruicial claim" for this appeal, and without an affirmative decision the opinion of the panel is incomplete, which as a matter of law requires an "en banc determination" now at least, to show that, the court was not used "improperly" and the "continuing fraud on this court" can be tolerated by this court, "based on the appellant's color, ethinicity, religious beliefs nationality, and race.

Fed.R.Civ.P.36(b),as shown Here, unmistakably' carries 'mandatory character(s)' like "Shall", " Must" etc."Mandatory language analogues to shall which we must ordinarily regard as inconsistent with judicially called exception: See Lexicom V.Milberg Bershad & Lerach, 523 U.S. 26, 35, 116 S.Ct 956, 140 L.Ed 2d 62 (1988)(explaining that mandatory language such as " Shall " ....normally creates an obligation impervious to judicial discretion" Hewitt V.Helms, 459 U.S. 460, 471, 103 S.Ct 864, 74 L.Ed 2d 675 (1983).(referring to SHALL WILL and MUST as language of an unmistakably mandatory character). Sandin V. Conor 515 U.S. 472, 115 S.Ct 2793, 132 L.Ed 2d 418 (1995)

G.The Panel has violated the "procedural due process" by leaving out a "major claim of Annamalai (about Fed.R.Civ.P.36(b)

"Procedural due process considers NOT the justice of deprivation, but only the means by which the deprivation was effected.Caine, 943 F.2d at 1411.Thus the inquiry that stems from a denial of due process is not the liberty or property that was taken from the plaintiff, but the fact that it was taken without sufficient process.See Nasierowski Bros Inv Co V. City of Sterling Heights, 949 F.2d 890, 894 (6th Cir 1991), stating that [c]onceptually, in the case of a procedural claims, 'the allegdly infirm process is an injury itself" (quoting Hammond V. Baldwin, 866 F.2d 172, 176 (6th Cir 1989); Bums V. Pa. Dep't of corections. 544 F.3d 279, 294 (3d Cir 2008). "Accordingly, a procedural due process violation is complete at the moment an individual is deprived of a liberty or property interest without being afforded the requisite process" Consequently, "no latter hearing and no damages award can undo the fact that arbitray taking tha that was subject to the right of procedural due process has already occured" Flentas, 407 U.S. at 82. Bowlby V. City of Aberdeen, 681 F.3d 215 (5th Cir 2012). "due process is flexible and calls for such procedural protections as the particu -lar situation demanded.The provision of a adequate due process not only helps to prevent unwanted deprivations, but also serves the purpose of making an individual feel that the other party has dealt with her failrly" (Case Law omitted).

"The Substantive component of the due process clause protects those rights are fundamental, that is rights that are 'implicit' in the concept of ordered liberty" Palko V. Connèticut, 302 U.S. 319, 325 82 L.Ed 288 (1937). " a violation of procedural due process occurs where the state fails to provide due process

A violation of substantive due process occurs when an individual's "fundamental rights", those implicit in the concept of ordered property rights has been infringed no matter the fairness of the proceeding.Mr.Annamalai respectfully state that, his procedural due process and substatntive due process with equal protection, all were violated by the panel's opinion, especially, by "leaving out" whether the Hyde amendment motion is an ancillary "civil proceeding" underlying the criminal action per se.The Fifth amendment of the U.S.Constitution provides that, "no person shall be deprived of life, liberty or property without "proper due process of law".

H. panel's decision is in violation of "parallel civil proceeding at U.S.Bankruptcy Court in the case no.09-0980-JEM, In Reg. HINDU TEMPLE AND COMMUNITY CENTER OF GEORGIA INC,as "specific facts" found out by the "final order"

The panel's decision, is also "direct assault" on another "standing final-non appelable judgement/order entered by the Bankruptcy judge Massey in the case no 09-9080-JEM in the Docket no.400,dated 09/24/2012.Mr.Annamalai has included such opinion as Appendix- Evidence no.3 , and by reference, fully and expressly reincorporated herin.

As stated, this panel has no legal authority to undermine or "directly/ indirectly vacate a "standing -final order" from an allied bankruptcy proceeding, in which Judge Massey has "expressly" found out what are the "propertiers belonging to the Hindu Temple of Georgia's estate.As a matter of "straightforward" "prosecutorial misconduct" "Fraud on the court", direct evidence relates to "frivolus, malicious, vexatious" prosecution, Mr.Annamalai, respectfully, directs this court's atention to the "specific pages" of such "final judgement".(The government on the day one of Mr.Annamalai's arrest, knew about such "final order which was brought at the time of Mr.Annamalai's bond hearing at Houston-Texas, and as well as bond hearing before "judge Batten").However undeterred, the government attorneys, continued to prosecute Mr.Annamalai on bankruptcty counts, with no respect to law, and the liberty interest. (most notably based on such wrongful convictions, several "friends" of the Prosecutors Mr.Samir Kaushal, Steven D.Grimberg, became wealthy-multi millionaires, "with Mr.Annamalai' hard and lawfully earned wealth!!).

Mr.Annamalai respectfuilly state that, its "nothing but a "gang rape" orchestraated by the prosecution, for "the pleasures "of Judge Batten, and also for all of their "privies".Some of the facts specifically found out by the Bankruptcy judge Massey, which 100% undermines this panel's opinion as follows:-

(1). Page 11, P 2. :- "Plaintiff introduced insufficient evidence to identify any property of the estate in possession of any defendant other than the "siddhi times USA", the web sites and the telephone numbers and is not entitled to turnover of unidentified property that may or may not exist, despite admissions of defendants that they received unauthorized transfers of property of the estate and is not entitled to injunctive relief as to such alleged transfers".

I. Another Parallel "civil proceedings" at State court of Indiana, which issued an "Equitable order of Specific performance" based on various "judicial facts" was also "assulted" and as well as "undermined" "overturned" by this panel's decision

A parallel civil proceeding at Vigo County Superior Court Terre Haute Indiana in the civil action no. 84D02-1704-MI-2768 (Annamalai V.Kalyani), in which the government, its employees, inclusive of .Stevn D.Grimberg, Mr.samir Kaushal

former U.S.Attorney General Jeff Sessions, the "corrupt" bankruptcy Trustee, Mr.Lloyd T.Whitaker, his counsel Mr.James Hayden Kepner, and several of their "privies" were brought as "PART-IN - PRIVITY".After several years of court battle, and most notably the government actors, patently acted a "above the law", caused the state court judge to "GRANT" Mr Annamalai, with an "Equitable order of Specific performance" against "various ACCOUNT DEBTORS" based on various outstanding debts (invoices).Those invoices, expressly has stated the "torts injuries" orchestrated" by the government attorneys.See, App- Evidence No(s) 8. through 13 . The Evidence no. 8 . is the "certified copy of such "Equitable order of specific performance". The Evidence no(s) 9-13 are the related "debts/invoices" of the government actors and their privies, with "specific reasons for such debts" enumerated in such invoices, which are of coiurse public-judicial records for over 7 years, and the government attorneys appears to belive that, 'stil they are above the law. Evidence no.14, is the certified copy of the "account Debtors" subject to specific order of performance(incl.govt.attorneys)

J. Mr.Annamalai respectfully demand "full faith and credit" pursuant to 28 U.S.C.§ 1738, which also carries "mandatory Character" in support of "request for "rehearing en banc"

Mr.Annamalai ask this court, to give "full faith and credit" for the Indiana court's judicial records in "full", which such "final order of specific performance" was ordered "before" this panel's erroneous ruling issued by this month.

The statute 28 U.S.C.§ 1738, with "mandatory character(s) "SHALL" (which removes all the "discretionary authority of this court by all means) in pertinent part expressly states as follows:-

> The records and judicial proceedings of any court of any such state..... **or** copies there of **shall** be proved **or** admitted in other courts in the United States..... such Acts, records and Judicial proceedings **or copies** thereof..... **shall** have the same **full faith and credit** in every court within the United States.... from which they are taken....."

Wherefore, as a matter of law, Mr.Annamalai ask this court to give "full faith and credit to the Evidence numbers 8 through 14 now, which will also compels this panel'e erroneous decision to be reveresd.Let Mr.Annamalai be careful and cautious that, he is "NOT" asking such invoices to be paid by the "Account debtors" as expressly shown in such invoices, of course all are the "copies" of the "judicial records/proceedings from the Indiana court.He is bringing such "judicially established facts in Indiana court to the panel/En Banc panel's attention about, how much "respect" the government's attorneys have for the courts, and coupled with their "various misconducts, vexatious, malicious, frivolous conducts" were "judicially proven and also admitted in the Indiana court, which has lead to a "final-non appelable order of Specific performance, which has notably created a cloud on the erroneous decision by the panel per se.

All, Mr.Annamalai is asking this court for the "amount as demanded by him" under "Hyde amendment fees", as per his opening brief as submitted to this court.

K. The Doctrine(s) of "Rooker-Feldman", "Res Judicata", "Final order Rule", all warrants the eroneous decison of the panel to be reversed by granting the reliefs as sought by Mr.Annamalai in this action.

Here, unmistakably, the prosecution is well aware of the "final-non appealable" judgement from the civil bankruptcy proceedings in the case no. 09-9080-JEM, N.Dist ga, as demonstrated above.Judge Massey expressly found out "what are the properties "transferred" to Mr.Annamalai or his privies, as "post-petition transfers" (See, Evidence no.3), which was "years" before" Mr.Annamalai's "malicious, vexatious, or at least frivolus "bankruptcy fraud and money laundering charges", by the "corrupt prosecutors".Having said, "HOW COME PANEL OR ANY JUDGES IN COURT "WITH CONSCIOUS MIND" AND ALSO WHO "TOOK OATH OF OFFICE" CAN SAY THAT, the " 22 counts" were "not" brought by the prosecution either as "frivolous", or "malicious" or "vexatious"?. Respectfully, the "court" is to serve the public, and "should not" be the "place to bail out the government attorneys, like Samir Kaushal, Steven D.Grimberg, "who has openly" assaulted" the "standing final order/judgement of Bankruptcy judge Massey in the same Northern district of Georgia, where Mr.Annamalai was vexatiously prosecuted.

Also as a matter of law, the doctrine of Res judicata, also prevents to "assault" the "facts" and "law" found out by Bankruptcy Judge Massey in his final order (Evidence no. 3), and as well the "final equitable order of Specific performance" granted/ordered by the Indiana court, wherewhich, the "Hyde amendment matters (the prosecution was brought vexatiously, frivolously, or maliciously) (Evidence no(s) 8 to 14).

"most interestingly", the "same prosecutors" in Mr.Annamalai's criminal case, even brought about a "judgement secured against" Mr.Annamalai, "without Mr.Annamalai's knowledge" in the same Bankruptcy case's "main proceedings", by the government's privy Mr.Lloyd T.Whitaker, the "corrupt bankruptcy Trustee (he was found out to be a "corrupt" bankruptcy Trustee in the Indiana state court action anyway), at the time of Mr.Annamalai's "(first) sentencing in the year of 2015.Mr.Annamalai's counsel argued as such the civil bankruptcty "default judgement" shall not be used against Mr.Annamalai in the criminal proceedings at all.However, Judge Batten, "voluntarily" steped inside that time "to support" the "corrupt prosecutors" as such "RES JUDICATA" is applicable in the "criminal case of Mr.Annamalai", inclusive of the "civil bankruptcy orders". See, Evidence no. 15 , the pertinent portion of court's transcript's, which has occured, on or about December of 2014.Please take judicial notice of the same under Fed.R.Evid.201 et seq.

WHEREFORE, to apply the "GOOSE V.CANDOR" rules "set" by Judge Batten, Mr.Annamalai, now, entitled to "res judicata" on all the matters, as shown in the Evidence no(s) 3, 8 through 14 at this action, which also warrants the panel to reverse its erroneous decison, or otherwise, warrants an "en banc" determination at least.

"Resjudicata applies not only to the precise legal theory presented in the previous litigation, but to all legal theory and claims arising out of the same operative nucleus of fact". Sea-Land Swrvices Inc V. Gaudex, 414 U.S. 573, 578-79, 94 S.Ct 806, 39 L.Ed 2d 9 (1974). ["The basic rule of claim preclusion is that when a court of competent jurisdiction has entered a Final Judgement on the merits of a cause of action, the parties to the Suit and their **privies** are therefore bound, not only as to every matter which was offered and resolved to sustain or defeat the claim.....but as to any other admissiible matter which might have been offered for that purpose".]

Notably, the "final Judgement and as well as the "equitable order of "Specific performance" towards the "Account Debtors" from the Indiana Court is a "final action, and which was an adjudication on the merits by a Court of Competent Jurisdiction. See, Roth V.Gulf Atl. Media of Ga Inc., 536 S.E.2d 577, 580 (ga ct Aop. 2000).

" It is well established that Res Judicata " acts as a bar not only to the precise legal theory presented in the previous litigation, but to **all** legal theory presented in the previous litigation, but to all legal theories and claims arising out of the same operative nucleus of fact" Sentinel offender Svcs, LLC V. Glover, 766 S.E. 2d 456, 465 n.15 (ga 2014). [" claim or"cause of action" in this context does not mean the specific theory of recovery.....asserted, instead when a subsequent action arises from the same facts the subsequent action should be barred by res judicata). Moreover, a cause of action in Georgia is defined by the factual predicate giving rise to a purported right to relief, **not** by the particular form of relief requested.See, Neely, 681 S.E. 2d at 679 (noting that [or] some new relief has been requested).

" Under Res judicata " a final judgement" on the merits bars further CLAIMS by parties or their privies . based on the same cause of action" Montana V. United States, 440 U.S. 147, 99 S.Ct 970, 973, 59 L.Ed 2d 210 (1979). "the purpose behind the doctrine of res Judicata is that the Full and fair opportunity to litigate protects [a party's] adversaries from the expense and vexatious vexation attending multiple lawsuits conserves Judicial resources and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions". Crowe V. Elder, 290 Ga 686, 688, 723 S.E. 2d 428, 430 (2012). "Res Judicata bars the filing of claims which were raised or could have been raised in an earlier proceeding." Crowe, 290 Ga at 688, 782 S.E. 2d at 430.

" a final Judgement on the merits in a civil action operates to preclude a party or those in **privity** with a party from relitigating in a subsequent proceeding issues that were or could have been raised in the original action". Federated Dep't Stores Inv V. Moltie, 452 U.S.394 (1981). Under Georgia law " [a] cause of action has been deemed to be entire set of facts which give rise to an enforce--able claim". Grower V. Elder, 723 S.E. 2d 428, 430 (ga 2012)(quoting Morrison V.Morrison, 663 S.E. 2d 714, 719 (ga 2008). **Res Judicata** "applies even if some new factual allegations have been made, some new relief has been requested or a new defendant has been added. Neely V. City of Riverdale, 681 S.E. 2d 677, 679 (ga Ct. app. 2009).

"Res Judicata makes a final, valid Judgement, a court's final order as conclusive on the parties and those in **Privity with them, as to all matters, fact and law, that were or should have been adjudicated in the proceeding" (case law omitted).**

The Purpose of Res Judicata (Claim preclusion) is to Protect "litigants from the burden of relitigating an identical issue with the same party or his privy and to [promote] Judicial economy by preventing needlss litigation" Parklane Hosiery Cov. Shore, 439 U.S. 322, 326, 99 S.Ct 645, 58 L.Ed 2d 552 (1979).

"This court "SHALL" give "preclusive" effect to the Final Equitable order of Specific Performance" from Indiana, as would another court of that state ". Parsons Street Inc V. First Alabama bank, 474 U.S. 518, 106 S.Ct 768, 769-70, 88 L .Ed 2d 877 (1986).

In issue preclsuion acts to bar a subsequent atempt to relitigate the same "fact" or "issue", where that fact or issue(s) was necessarily adjudicated in a former suit and is presnted in a subsequent action. [like one what the petitioner walker is unlawfully atempting at this court now].

"Under Indaian law, "issue preclusion bars litigation of the same fact or issue that was necessarily adjudicated in a former suit" Miller Brewing Co. V. Ind. Dept. State Revenue, 903 N.E.2d 64, 68 (Ind 2009).

(1).The prosecutors/government attorneys are "not above the law".They are not "lisenced" to "fabricate an entire criminal case", then latter shall not be allowed that they legitimately believed as crime have been convicted.

The events occured before and after the Huyde Amendment attorney fees litigation , literally shocking conscious one.By using the wrongful 22 counts of vacated conv--ictions, even "before" the criminal forfeiture proceedings became "final", all the Bilions of dollars worth properties were "released" in direct violation of Fed. R,Crim.P.32.2(d), which carries a mandatory character as "must" not Release the properties subject to the criminal forfeiture, when the "direct appeal (of Mr.Annamalai) was pending.Also the $210,000,000.00 the vintage "Paru tower" was "looted" by the privies of the prosecution too, which in fact was the basis for extortion and blackmailing to start with.

Annamalai is the :FIRST human in the United states court's history charged for a violation of 18 U.S.C.158(1), based on a vexatious and or bad faith theory as such Annamalai, since worked for the bankrupt entity, and after the bankruptcy he should not work for any one, and all the personal earnings of Annamalai all his life time belonging to the corrupt trustee of Annamalai's formet Temple and Annamalai is a "SLAVE' to the bankruptcy trustee forever.

The prosecution of bankruptcy fraud counts and money laundering was brought without reasonable or probable cause or excuse". Because its factually impossible for Annamalai to violate 18 U.S.C. § 152(1) since ' NONE" of the properties as claimed in te ind ictment, was the properties of the Hindu Temple of georgia at any point of time.

> Here, in 'Annamalai's criminal action, the government, "with full knowledge that it was *contrary to recent and controlling precedent,* . . . induced the grand jury" to charge in objectives 2-5 of Count I of the indictment that a bank-fraud conspiracy violated 18 U.S.C. § 371. Adkinson I, 135 F.3d at 1374 (emphasis added). It further persuaded the district court to deny the appellants' motion to dismiss the indictment which did not allege any crime under the existing law. The government did so on the future hope that this Court would reverse the then existing precedent during the appellants' trial, and willfully ignored appellants' rights. In urging the trial court not to dismiss the indictment which concededly did not charge a crime, the government stated that the trial court should take:
>
> > the bold, high level, high risk approach, and that is to simply leave the indictment as is and if *Hope* [the controlling case] is sustained let them take it up on appeal and *have it reversed.* (emphasis added). Id. at 1368-69. Unlike our finding in *Gilbert,* this was not a case where the law was unclear and the district court accepted a viable legal argument on an "issue . . . debatable among reasonable lawyers and jurists." 198 F.3d at 1304. The district court in this case knew that controlling precedent precluded prosecution.
>
> It is beyond cavil that the government's prosecutorial position was "foreclosed by [the] binding precedent" not only when the government brought the indictment, but also throughout the presentation of its case-in-chief, leading this Court to overturn{2001 U.S. App. LEXIS 10} all of the defendants' convictions in order "to serve the system which protects us all." Adkinson II, 158 F.3d at 1164.
>
> Notably, this Court's previous extensive discussion of the "bad faith" exercised by the government in bringing the charges against the appellants in the underlying criminal case. Adkinson I, 135 F.3d at 1374-755. In summary, this case was "a bad faith joinder and was seriously prejudiced to these defendants." Id. (emphasis added). That discussion, however, reflects

the correct legal standard which the district court should have applied. Prosecuting appellants in defiance of controlling authority constitutes "**vexatious**", "frivolous", and "bad faith" prosecutions. Gilbert, 198 F.3d at 1296. In the instant case, the government's prosecutorial position was "foreclosed by [the] binding precedent," not only when the government brought the indictment, but also throughout the presentation of its case-in-chief, tainting the entire proceedings. Adkinson I,135 F.3d at 1304.

Based on all of the circumstances of this case, conclude that the district court abused its discretion in denying the awards and in making a clearly erroneous finding that the government did{2001 U.S. App. LEXIS 11} not prosecute the appellants in bad faith on charges that the government knew not to be crimes, as established by this Court's binding precedent. The government's litigating position in this case was **vexatious**, frivolous, and taken in bad faith, justifying an award of "a reasonable attorney's fee and other litigation expenses" under the Hyde Amendment.

"determining whether the prosecution was frivolus requests the court to evaluate the "legal basis" of the indictment against Mr.Annamalai.Indisputably, the "initial panel" in the year of 2019, expressly ordered about "no legal basis" for the bankruptcty fraud and money laundering charges. See, Evidence no.15, and to highlight certain portions of such "non-appealable order " and as well as "law of the case doctrine", which were "violated" by the current panel are as folllows:-

We begin with § 541(a)(1), which provides that the bankruptcy estate consists of "all legal and equitable interests of the debtor in property *as of the commencement of the [bankruptcy] case*." 11 U.S.C. § 541(a)(1) (emphasis added). While state law generally creates and defines property interests, *see Butner v. United States*, 440 U.S. 48, 55, 99 S. Ct. 914, 59 L. Ed. 2d 136 (1979), the bankruptcy estate "succeeds only to those interests that the debtor had in property *prior* to the commencement of the bankruptcy case." *In re FCX, Inc.*, 853 F.2d 1149, 1153 (4th Cir. 1988)

The post-bankruptcy receivables were in fact payments for "new services" provided to followers by the Shiva Vishnu Temple *after* the Hindu Temple filed for bankruptcy. *See* D.E. 386 at 1154-55, 57. Those services simply were not provided by the Hindu Temple, which did no more business after the trustee shut it down in early November of 2009, or its estate. Further, the trustee and the IRS investigator testified (correctly in our view) that nothing prevented Mr. **Annamalai**-who was not the debtor-from opening a new temple like the Shiva Vishnu Temple and providing religious services to followers after the Hindu Temple filed for bankruptcy. *See BBeautiful v. Rieke-Arminak Corp. (In re BBeautiful)*, No. 2:16-bk-10799-ER, 2017 Bankr. LEXIS 615, 2017 WL

Likewise, the government made no attempt to demonstrate that the $3,000 donation check was generated by property of the bankruptcy estate under § 541(a)(6). *See In re Bracewell*, 454 F.3d at 1245.

But the ongoing nature of a bankruptcy proceeding does not, by itself, dictate whether something is or is not property of the estate. If the government's theory concerning property of the estate were correct, the temporal limitation set out in the text of § 541(a)(1) (i.e., "as of the commencement of the [bankruptcy] case") would be rendered illusory. We decline the invitation, express or implied, to depart from the statutory language.

We recognize that the trustee opined that the post-petition receivables of the Shiva Vishnu Temple belonged to the estate. That opinion, however, amounted to an incorrect and unsupported legal conclusion. *Cf. Diversified Fiber Prods. v. United States (In re Thena, Inc.)*, 190 B.R. 407, 412 (D. Oregon 1995) ("Chapter 11 does not permit the estate's inclusion of property that did not exist at the time of filing, for the debtor's beneficial, equitable{. use. . . . Congress promulgated Chapter 11 to protect, rather than enhance, the debtor's estate.").

First, we realize that in the trustee's view all of the merchant accounts of the Hindu Temple were property of the bankruptcy estate, and that Mr. **Annamalai** failed to obtain his permission to modify them, transfer them, or use them. We assume without deciding that this was indeed the case, *cf. In*

re Thomas B. Hamilton, Inc., 969 F.2d 1013, 1018-21 (11th Cir. 1992) (discussing the nature of credit card merchant agreements in the context of a corporate bankruptcy), but this assumption does not save the bankruptcy fraud convictions. The insurmountable difficulty for the government is that Counts 11-14 and 16-20 did not charge Mr. Annamalai with misappropriating the merchant accounts. They charged him with concealing specific receivables obtained by the Shiva Vishnu Temple on certain dates after the Hindu Temple filed for bankruptcy and stopped doing business. And, as noted earlier, the government's own evidence demonstrated that Mr. Annamalai never transferred to the Shiva Vishnu Temple any money in the merchant accounts belonging to the Hindu Temple.

Second, to the extent that the government relies on the trustee's testimony that Mr. Annamalai acted improperly by calling his new temple the Shiva Vishnu Temple when that name had been an alternative name of the Hindu Temple, that reliance is misplaced. Simply stated, Mr. Annamalai was not charged in Counts 11-14 and 16-20 with misappropriating the Shiva Vishnu Temple name.

At trial, the IRS investigator testified that the Hindu Temple and the Shiva Vishnu Temple were the same business, and the government told the district court that it considered the Shiva Vishnu Temple to be the alter ego of the Hindu Temple. *See* D.E. 386 at 1116-17. At closing argument, the government asserted that Mr. Annamalai was "using the same business," including the "good will of the Hindu Temple," to run the Shiva Vishnu Temple. *See* D.E. 390 at 2090. He was, in other words, "continuing the business." *Id.* at 2093. On appeal the government defends the bankruptcy fraud convictions on a similar alter ego theory, *see* Gov't Br. at 40-41, but due to the way this case was tried the theory is fatally flawed.

The government seems to believe that the Hindu Temple and its bankruptcy estate were one and the same, so that any continuation of the Hindu Temple's business by the Shiva Vishnu Temple is necessarily equated with the estate and all it comprised. That belief, however, is based on a misunderstanding of bankruptcy law.

At trial and on appeal, the government presented a theory of the case that relied on the same acts and evidence to prove both substantive bankruptcy fraud and conspiracy to commit bankruptcy fraud. In other words, the substantive bankruptcy fraud charges in Counts 11-20 formed the basis for the illegal agreement and the overt acts for the conspiracy to commit bankruptcy fraud charged in Count 10. *See, e.g.*, D.E. 390 at 2093 (explaining at closing argument that "[t]he opening of this [new Shiva Vishnu bank] account" and the "diverting of the credit card receipts" were the overt acts in furtherance of the alleged conspiracy); D.E. 227 at 5 (relying, in opposition to the Rule 29 motion for judgment of acquittal, on the same acts to demonstrate that there was sufficient evidence to prove both the substantive counts of bankruptcy fraud and the conspiracy to commit bankruptcy fraud); Gov't Br. at 36-38 (same).

Mr. Annamalai challenges his convictions on Counts 21-30, which charged him with money laundering in violation of 18 U.S.C. § 1956. As relevant here, that statute prohibits certain transfers of money derived from specified unlawful activities, including bankruptcy fraud. *See* 18 U.S.C. § 1956(c)(7)(D).

Each of the money laundering charges was predicated on proceeds generated from the specified unlawful activity of bankruptcy fraud. *See* D.E. 86 at ¶ 32. Because we have reversed all of Mr. Annamalai's convictions for substantive bankruptcy fraud and conspiracy to commit bankruptcy fraud due to insufficient evidence, there are no specified unlawful activities which provide a basis for the money laundering charges. We therefore reverse all of Mr. Annamalai's money laundering convictions.

Having held that the evidence was insufficient to sustain the convictions for the substantive bankruptcy fraud charges, we necessarily conclude that the evidence was likewise insufficient to sustain the conviction for conspiracy to commit bankruptcy fraud because the alleged illegal agreement did not involve property of the Hindu Temple's bankruptcy estate. The government did not present evidence of a separate agreement to conceal other property of the estate or any other overt acts in furtherance of such an agreement. We therefore reverse Mr. Annamalai's Count 10 conviction for conspiracy to commit bankruptcy fraud.

> In a criminal case like this one, where the government's burden is to prove guilt beyond a reasonable doubt, we cannot affirm Mr. Annamalai's bankruptcy fraud convictions on Counts 11-20 on a theory of liability not presented to the jury. *See McCormick v. United States*, 500 U.S. 257, 270 n.8, 111 S. Ct. 1807, 114 L. Ed. 2d 307 (1991) ("[T]he Court of Appeals affirmed [the defendant's] conviction on legal and factual theories never tried before the jury. . . [F]or that reason alone . . . the judgment must be reversed."); *Jackson v. Virginia*, 443 U.S. 307, 314, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979) ("It is axiomatic that a conviction upon a charge not made or a charge not tried constitutes a denial of due process."). The convictions on Counts 11-20 are reversed.

Most notably, "no human or entity" ever prosecuted by the government, for over a century in the Unite d States, simply some one worked for a bankruptcy entity and latter that person went to work for another entity, "lawfuly" after the first entity was in bankruptcy protection, constitues a bankruptcy fraud, and all the money lawfully earned by that person was a "money laundering".Respectfully, this prosecution, is a "straightforward, "malicious, frivolus, or vecatious prosecution against a "man of different faith", "to maximize" the wealth of "friends" of the prosecutors.

(2.) The panel's decision is an "implied vacture" of "facts" found out by the "initial panel" which vacated 22 counts of 34 counts of convictions, also has violated "final order rule" "Doctrine of Res Judicata, "Full faith and credit Act under 28 U.S.C.§ 1738

This panel's decision has created " new" facts, and has assaulted the privious panel's decision ordered on september 2019.The facts found out in the previous panel was "NOT" vacated in an "en banc determination".Having said, any"direct or indirect attempts to "undermine" the privious panel's facts found out, is precluded as a matter of law.The initial panel's some of the facts found out as follows, are so crucial for the award of Hyde amendment attorney fees, and "this panel" has assaulted such facts found out by the initial panel. The pertinent part of such opinion. which affects this appeal is enclosed herewith in Appendix - 3 and Evidence # 15, by reference fully and expresasly reincorporated herein.

I. " Specific facts "
found out by the panel which has vacated 22 counts of convictions
of Annamalai in September 2019

(a). Specific facts found out by the "initial panel Judges WILSON, JORDAN:
1). As a general matter, "[w]hether property is part of bankruptcy estate is "factual" issue for the Jury". United States V.Dennis, 237 F.3d 1295, 1300 (11th Cir 2001). Here, however, the "evidence was insufficient as a matter of law....."

The panel which has decided, with conscious action, has overturned the judicial facts as found in the first direct appeal's panel, which has vacated 22 counts of convictions of Mr.Annamalai, whic has lead to the present Hyde Amendment attorney fees award. The initial panel, expressly found out that (several times) there was "NO LEGAL BASIS" to convict Mr.Annamalai for bankruptcy Fraud, conspiracy to commit bankruptcy fraud, Money laundering and Harboring the fugitive. See, the Evidence no. the full copy of such order. Having said, how come the next panel cam simply assault the integrity of initial/first panel's opinion, which will notably undermines any and all respect on the judiciary, and would establsih that, the government attorneys are above the law, which "this court"shall not allow to happen by any means per se.

(3). The Conscious shocking "post-panel rehearing" action and appearance of "retaliation", combined with "sua sponte" "criminal referral" with "pre conceived theory, pre-judgement and pre notion as if the two orders of the Indiana Court are forgery, strengthens Mr.Annamalai's argument that the Panel's decison has been contamintated to further harm and injure Mr.Annamalai

Mr.Annamalai has taken up the patently erroneous panel decison to panel rehearing and also for en banc determintaion.Here the timing of such brutal and shocking conscious events are also so material.Mr.Annamalai was "sua sponte" "sanctioned" by the panel judges (appears to be by the "influence of Judge Julie Carnes, who was bragged by the district court Judge Timothy C.Batten Sr, as his"very close friend", and Judge Carnes "has always his (judge Batten's) back.Judge carnes also worked formerly with Judge Batten at the United States District court for the Northern district of Georgia!!) as such Mr.Annamalai has 'committed an illegal and criminal act of "forgery", when he has submitted several of evidences/Exhibits in support of his panel and en banc rehearing. See.Evidence no. 2 (see the Appendix-A

For this court to have complete backdrop of such completely unlawful act by the appellate judges, Mr.Annamalai has lawfully secured an Equitable order of specific performance from the Indiana's "special judge Honorable Charles D.Bridges on 11/09/2020, "before" deciding on the Hyde Amendment fees award" any way.The panel judges, accused Mr.Annamalai as such the orders(Appen-A) are forgery, since they were "hand written" orders. First as a matter of fact, there is no law in the state or federal that, the court's orders needs "only to be typed".Second, Mr.Annamalai was not even given with any due process" before" he was referred to the Criminal prosecution, based on the "false notion" by such judges, by violating every and any constitutionaly protected due process rights given under the United States constitution.The order was entered on 01.20.2023, and recived by Mr.Annamalai on 01.20.2023.Mr.Annamalai swiftly responded to such baseless and malicious order, which appears to be docketed on or about 02.02.2023.Then just within 3 (three) days, the court entered another order by "not accepting" as such there was no "forgery" and "backed off" from its earler "forgery standard" and expressly ordered as it will "consider" the alleged (falsely accused) evidences as forgery. Then on , "within 3 (days", THE ENTIRE JUDGES IN THE ENTIRE CIRCUIT HAS DECIDED as such Mr.Annamalai is not entitled for En banc determination".These acts appears to have some serious disregard of law, and even an assult on the en banc determination and panel rehearing, most notably a "chilling effect" on a man of color of different race, ethinicity, religion. who has stood up against the corruption "friendship" of certain persons who has "acted as above the law"

See. Appendix-2, which is the true copy of the "response" filed to the so called show cause order issued in a malicious manner and most notably a criminal contempt order, by "simply disregarding every constitutional protections" given to Mr.Annamalai to challange that order, he was "sua sponte" referred to the criminal prosecution. This is nothing but constant disregard of law, facts, and attacks on someones protected constitutional rights.The shocking moment here is, Mr.annamalai was referred to the same office/government attorneys, who in fact fabricated the entire 22 counts of convictions, which is the subject matter of the instant Hyde Amendment award litigation at "this court" now.Mr.Annamalai has also filed a motion to rescind such unconstitutional order, which Mr.Annamalai has no idea to what happened to such motion and its ruling either!!!??

This case is of national importance.It involves circuit split, accused the defendant criminally, since he won his 22 counts of fabricated, malicious, frivolus, vexatious and bad faith prosecution.Straigtforward attack on the well established ROOKER-FELDMAN doctrines, since the panel has expressly orderes as by " unlawfully" reviewing the state court's final order of specific performance as "has lot of errors".Attacked the or simply disregarded another standing final non appealable order entered by a bankruptcy judge 'well before" the Bankruptcy indictment, which has expressly found out Mr.Annamalai "did not violate" the bankruptcy law.see, Evidence no.3.

Conclusion and relief sought

WHEREFORE, Mr.Annamalai as well demonstrated in this petition-brief and also based on the associated evidences attached to this petition, and also about the other motions simultaneously filed with this petition, he humbly PRAY this court for the following reliefs:-

1. Grant this petition for a certiorari should be GRANTED;

2. GRANT the reliefs as sought in the motions as enclosed herewith;

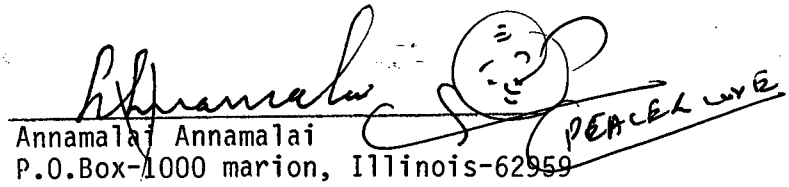
3.An appointment of a counsel, and with the allowance of replead or supplement this petition matters with the assistance of a counsel by this court;

4. Rule on all the matters by a Individual judge Honorable Justice Ketanji B.Jackson;

5. Full faith and credit for all the Indiana state court records at this action;

6. Any more relief also be granted apart from the ones as expressly sought herein to do complete justice in Equity.

Respectfully Submitted this-day of 21, February 2023.



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Enclosures: